

Nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when such property is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package or consume food or beverages, regardless of where consumption of the food or beverage occurs. Receipts from sales for resale are not subject to the Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2070(b)(3). (This is a GIL.)

November 21, 2001

Dear Xxxxx:

This is in response to your letter dated August 30, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you stated and made inquiry as follows:

NAME is a wholesale distributor of food and food related products. We sell to restaurants, schools and nursing homes. We would like to verify that we are in compliance with your state laws to the taxability of certain products. Could you please indicate the tax status for each of the items below based upon the entity type listed?

	Restaurant	School	Nursing Home
wetnaps (restaurant)			
wetnaps (casino)			
paper doilies			
straws			
toothpicks (wrapped/unwrapped)			
doggie bags			
paper napkins			
disposable placemats			
paper placemats			
carryout containers			
carryout bags			
disposable drinking cups			
ice cube bags (used by restaurant)			
ice cube bags (used to sell ice for carryout)			
coffee stirrers			
disposable silverware			
stir sticks			

portion cups (disposable)				
plastic plates (disposable)				
plastic steak markers				
plastic table covers (reusable)				
plastic table covers (disposable)				
paper table covers				
paper liners for pizza boxes				
paper liners for baskets for serving to customer				
kids meal toys				
gloves				

We would appreciate it if you would send us documentation explaining the correct tax status of these items.

If you have any questions please contact us.

Thank you for your cooperation.

I am unable to respond to your inquiry in the manner you have requested. Insufficient information has been provided to make a determination with regards to each item in your list of tangible personal property sold by NAME. For your information and reference please find enclosed a copy of the Department's regulation governing "Sales of Containers, Wrapping and Packing Materials and Related Products", 86 Ill. Adm. Code 130.2070. Provided below is a general discussion of the tax treatment regarding sales of products of the type sold by NAME.

Nonreusable tangible personal property sold to food and beverage vendors, including persons engaged in the business of operating restaurants, cafeterias or drive-ins, is a sale for resale when such property is transferred to customers in the ordinary course of business as part of the sale of food or beverages and is used to deliver, package or consume food or beverages, regardless of where consumption of the food or beverage occurs. Receipts from sales for resale are not subject to the Retailers' Occupation Tax. See Section 130.2070(b)(3). The supplier of such items must be presented with a Certificate of Resale by the purchaser in order for the transaction to be nontaxable. By way of example items sold for resale include, but are not limited to, paper and plastic cups, plates, baskets, boxes, sleeves, buckets or other containers, utensils, straws, placemats, napkins, doggie bags and wrapping or packaging materials that cannot be reused by the food or beverage vendor and which are transferred to customers as part of the sale of food or beverages. Additionally, small toys and prizes provided in children's meals and transferred to the customer as part of the sale of such child's meal are also considered items sold for resale.

It must be clarified, however, that food vendors purchasing items used or consumed in conducting their business and which are not transferred to the customer fully incur Use Tax as the end users of the items sold. Such items include, but are not limited to, paper products, serving trays, serving dishes, utensils or condiment bottles. The supplier's receipts from the sale of items for use or consumption are subject to the Retailers' Occupation Tax. See 130.2070(b)(3) and (c)(1).

You noted in your request for information that you sell tangible personal property to schools and nursing homes. Please be aware that the tax treatment of sales of tangible personal property to schools and nursing homes for use or consumption may be effected by whether the school or nursing home is organized and operated exclusively for charitable, religious or education purposes.

Corporations, societies, institutions, associations and foundations that make application to the Department and are determined to be organized and operated for exclusively charitable, religious or educational purposes are exempt from Use Tax when purchasing tangible personal property for use or consumption in the furtherance of organizational purposes. A supplier's receipts from the sale of tangible personal property to a purchaser for use or consumption who has been determined by the Department to be organized and operated exclusively for charitable, religious or educational purposes is not subject to Retailers' Occupation Tax. Please see the enclosed copies of 86 Ill. Adm. Code 130.2005 and 130.2007. A home for the aged that is not organized or operated as a business enterprise with a view to profit and which otherwise qualifies as a charitable institution is considered an exempt buyer. See 130.2005(k)(1). Additionally, schools giving systematic instruction in useful branches of learning are organized and operated exclusively for educational purposes and are considered exempt buyers. See Section 130.2005(l).

The Department issues a tax exemption identification number ("E" number) to organizations determined to be organized for exclusively religious, educational or charitable purposes. A valid E number must be presented to the supplier in order for receipts from sales of tangible personal property to such organizations for use or consumption to be exempt from Retailers' Occupation Tax.

With respect to sales to nursing homes, nursing homes are generally considered service providers and are subject to either the Service Occupation Tax or the Use Tax depending upon whether the facility chooses to register under the Service Occupation Tax Act.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to their sales of service. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen chooses to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of serviceman's entire bill; (3) Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or (4) Use Tax on his cost price if he is an unregistered de minimis serviceman. Please see the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Whether a sale to a nursing home is considered a sale for resale as explained above will depend on what method the nursing home uses to calculate its tax base. If the nursing home chooses to remit Service Occupation Tax using any of the first three methods explained above (i.e., separately stated selling price, 50% of the entire bill to their service customers, or, as a registered de minimis servicemen, on the cost price of the tangible personal property transferred), then the nursing home may present a Certificate of Resale to the supplier and the transaction will be nontaxable. If, however, under the fourth method the nursing home is a de minimis servicemen that is not registered with the Department, the nursing home must pay Use Tax to its supplier on the cost price of the items to be transferred with service. Unregistered de minimis servicemen cannot claim the transaction as a sale for resale, and therefore, the transaction is taxable and the supplier must collect the Use Tax.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
Enc.